

(e) *State, local and Indian tribal governments.* Profit or fee shall not be paid under contracts with State, local, and Indian tribal Governments.

**915.404-70-2 Weighted guidelines system.**

(a) To properly reflect differences among contracts and the circumstances relating thereto and to select an appropriate relative profit/fee in consideration of these differences and circumstances, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.404-4(d) and paragraph (d) of this section. This is a structured system, referred to as weighted guidelines. Each profit factor or subfactor, or component thereof, has been assigned weights relative to their value to the contract's overall effort. The range of weights to be applied to each profit factor is also set forth in paragraph (d) of this section. Guidance on how to apply the

weighted guidelines is set forth in 48 CFR 915.404-4-70-8.

(b) Except as set forth in 48 CFR 915.404-4-70-4, the weighted guidelines shall be used in establishing the profit objective for negotiation of contracts where cost analysis is performed.

(c) The negotiation process does not contemplate or require agreement on either estimated cost elements or profit elements. Accordingly, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation process in order to develop a mutual understanding of the logic of the respective positions, specific agreement on the exact weights of values of the individual profit factors is not required and need not be attempted.

(d) The factors set forth in the following table are to be used in determining DOE profit objectives. The factors and weight ranges for each factor shall be used in all instances where the weighted guidelines are applied.

Profit factors	Weight ranges (percent)
I. Contractor Effort (Weights applied to cost):	
A. Material acquisitions:	
1. Purchased parts .....	1 to 3.
2. Subcontracted items .....	1 to 4.
3. Other materials .....	1 to 3.
B. Labor skills:	
1. Technical and managerial:	
a. Scientific .....	10 to 20.
b. Project management/administration .....	8 to 20.
c. Engineering .....	8 to 14.
2. Manufacturing .....	4 to 8.
3. Support services .....	4 to 14.
C. Overhead:	
1. Technical and managerial .....	5 to 8.
2. Manufacturing .....	3 to 6.
3. Support services .....	3 to 7.
D. Other direct costs	3 to 8.
E. G&A (General Management) expenses	5 to 7.
II. Contract Risk (type of contract-weights applied to total cost of items IA thru E) .....	0 to 8.
III. Capital Investment (Weights applied to the net book value of allocable facilities) .....	5 to 20.
IV. Independent Research and Development:	
A. Investment in IR&D program (Weights applied to allocable IR&D costs) .....	5 to 7.
B. Developed items employed (Weights applied to total of profit \$ for items IA thru E) .....	0 to 20.
V. Special Program Participation (Weights applied to total of Profit \$ for items IA thru E) .....	-5 to +5.
VI. Other Considerations (Weights applied to total of Profits \$ for items 1A thru E) .....	-5 to +5.
VII. Productivity/Performance (special computation) .....	(N/A).

**915.404-4-70-3 Documentation.**

Determination of the profit or fee objective, in accordance with this subpart shall be fully documented. Since the profit objective is the contracting officer's pre-negotiation evaluation of a

total profit allowance for the proposed contract, the amounts developed for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated amounts will probably vary from the objective

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and from the pre-negotiation detailed application of the weighted guidelines technique to each element of the contractor's input to total performance. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes to the contractor's input to total performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained in the price negotiation memorandum prepared in accordance with FAR 15.406-3.

### 915.404-4-70-4 Exceptions.

(a) For contracts not expected to exceed \$500,000, the weighted guidelines need not be used; however, the contracting officer may use the weighted guidelines for contracts below this amount if he or she elects to do so.

(b) For the following classes of contracts, the weighted guidelines shall not be used:

(1) Commercialization and demonstration type contracts;

(2) Management and operating contracts;

(3) Construction contracts;

(4) Construction management contracts;

(5) Contracts primarily requiring delivery of material supplied by subcontractors;

(6) Termination settlements; and

(7) Contracts with educational institutions.

(c) In addition to paragraphs (a) and (b) of this section, the contracting officer need not use the weighted guidelines in unusual pricing situations where the weighted guidelines method has been determined by the DOE negotiating official to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the Head of the Contracting Activity. The contract file shall include this documentation and any other information that may support the exception.

(d) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth in this section, other methods for establishing the

profit objective may be used. For contracts other than those subject to 48 CFR 917.6, the selected method shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

### 915.404-4-70-5 Special considerations—contracts with nonprofit organizations (other than educational institutions).

(a) For purposes of identification, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(b) In computing the amount of profit or fee to be paid, the DOE negotiating official shall take into account the tax benefits received by a nonprofit organization. While it is difficult to establish the degree to which a remuneration under any given contract contributes to an organization's overall net profit, the DOE negotiating official should assume that there is an element of profit in any amount to be paid.

(c) In order to assure consideration of the tax posture of nonprofit organizations during a profit or fee negotiation, the DOE negotiating official shall calculate the fee as for a contract with a commercial concern and then reduce it at least 25 percent. However, depending on the circumstances, the contracting officer may pay profit or fees somewhere between this amount and the appropriate profit or fee as if it were a commercial concern. When this is the